

Section 7 Glossary/Reference Chapter 28 Missouri Revised Statutes

NOTE: The following revised statutes can be founded at
www.moga.state.mo.us/statutes

Missouri Revised Statutes

Chapter 566

Sexual Offenses

Chapter 566 and chapter 568 definitions.

566.010. As used in this chapter and chapter 568, RSMo, the following terms mean:

- (1) "Deviate sexual intercourse", any act involving the genitals of one person and the hand, mouth, tongue, or anus of another person or a sexual act involving the penetration, however slight, of the male or female sex organ or the anus by a finger, instrument or object done for the purpose of arousing or gratifying the sexual desire of any person;
 - (2) "Sexual conduct", sexual intercourse, deviate sexual intercourse or sexual contact;
 - (3) "Sexual contact", any touching of another person with the genitals or any touching of the genitals or anus of another person, or the breast of a female person, or such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person;
 - (4) "Sexual intercourse", any penetration, however slight, of the female sex organ by the male sex organ, whether or not an emission results.
- (L. 1977 S.B. 60, A.L. 1987 H.B. 341, A.L. 1991 H.B. 566, A.L. 1994 S.B. 693, A.L. 2000 S.B. 757 & 602, A.L. 2002 S.B. 969, et al.)

Mistake as to incapacity or age.

566.020. 1. Whenever in this chapter the criminality of conduct depends upon a victim's being incapacitated, no crime is committed if the actor reasonably believed that the victim was not incapacitated and reasonably believed that the victim consented to the act. The defendant shall have the burden of injecting the issue of belief as to capacity and consent.

2. Whenever in this chapter the criminality of conduct depends upon a child being thirteen years of age or younger, it is no defense that the defendant believed the child to be older.

3. Whenever in this chapter the criminality of conduct depends upon a child being under seventeen years of age, it is an affirmative defense that the defendant reasonably believed that the child was seventeen years of age or older.

(L. 1977 S.B. 60, A.L. 1994 S.B. 693)

Effective 1-1-95

Marriage to victim, at time of offense, affirmative defense, for certain crimes.

566.023. It shall be an affirmative defense to prosecutions pursuant to sections 566.032, 566.034, 566.062, 566.064, 566.068, and 566.090 that the defendant was married to the victim at the time of the offense.

(L. 1994 S.B. 693, A.L. 1998 H.B. 1918)

Evidence that defendant has committed other charged and uncharged crimes of a sexual nature involving victims under fourteen admissible to prove propensity to commit crime, when.

566.025. In prosecutions pursuant to this chapter or chapter 568, RSMo, of a sexual nature involving a victim under fourteen years of age, whether or not age is an element of the crime for which the defendant is on trial, evidence that the defendant has committed other charged or uncharged crimes of a sexual nature involving victims under fourteen years of age shall be admissible for the purpose of showing the propensity of the defendant to commit the crime or crimes with which he or she is charged unless the trial court finds that the probative value of such evidence is outweighed by the prejudicial effect.

(L. 1994 S.B. 693, A.L. 2000 S.B. 757 & 602)

(1998) Section was ruled unconstitutional because it violated Sections 17 and 18(a) of Article I of the Missouri Constitution by allowing uncharged conduct to be introduced for the purpose of showing a propensity to commit a crime. State v. Burns, 978 S.W.2d 759 (Mo.banc).

Forcible rape and attempted forcible rape, penalties.

566.030. 1. A person commits the crime of forcible rape if such person has sexual intercourse with another person by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.

2. Forcible rape or an attempt to commit forcible rape is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless in the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, in which

case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years.

(L. 1977 S.B. 60, A.L. 1980 H.B. 1138, et al., A.L. 1990 H.B. 1370, et al., A.L. 1993 S.B. 180, A.L. 1994 S.B. 693, A.L. 1998 H.B. 1779)

CROSS REFERENCES: Child abuse, definitions, actions for civil damages may be brought, when, RSMo 537.046 No bail, certain defendants, certain offenses, RSMo 544.671 Prosecuting witness in rape case not to be interrogated as to prior sexual conduct, RSMo 491.015

(1989) Use of weapon not required to prove charge of felonious restraint. Threat of injury from weapon is sufficient to substantiate the charge. (Mo.App.) State v. Brigman, 784 S.W.2d 217.

(1992) Pursuant to section 1.030, RSMo, use of word "he" includes both male and female and because section encompasses the conduct of males and females, there is no violation of the equal protection clauses of the United States or Missouri Constitutions. State v. Stokely, 842 S.W.2d 77 (Mo. en banc).

(1997) Female can be held guilty of rape where she aids a male in committing the rape, even though she cannot commit a rape individually. Bass v. State, 950 S.W.2d 940 (Mo.App.W.D.).

Statutory rape, first degree, penalties.

566.032. 1. A person commits the crime of statutory rape in the first degree if he has sexual intercourse with another person who is less than fourteen years old.

2. Statutory rape in the first degree is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless in the course thereof the actor inflicts serious physical injury on any person, displays a deadly weapon or dangerous instrument in a threatening manner, subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, or the victim is less than twelve years of age in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years.

(L. 1994 S.B. 693)

Effective 1-1-95

Statutory rape, second degree, penalty.

566.034. 1. A person commits the crime of statutory rape in the second degree if being twenty-one years of age or older, he has sexual intercourse with another person who is less than seventeen years of age.

2. Statutory rape in the second degree is a class C felony.

(L. 1994 S.B. 693)

Effective 1-1-95

Sexual assault, penalties.

566.040. 1. A person commits the crime of sexual assault if he has sexual intercourse with another person knowing that he does so without that person's consent.

2. Sexual assault is a class C felony.

(L. 1977 S.B. 60, A.L. 1994 S.B. 693)

Effective 1-1-95

CROSS REFERENCE: Child abuse, definitions, actions for civil damages may be brought, when, RSMo 537.046

Forcible sodomy, penalties.

566.060. 1. A person commits the crime of forcible sodomy if such person has deviate sexual intercourse with another person by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.

2. Forcible sodomy or an attempt to commit forcible sodomy is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless in the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years.

(L. 1977 S.B. 60, A.L. 1980 H.B. 1138, et al., A.L. 1990 H.B. 1370, et al., A.L. 1994 S.B. 693, A.L. 1998 H.B. 1779)

CROSS REFERENCE: Child abuse definitions, actions for civil damages may be brought, when, RSMo 537.046

(1993) For purposes of definition of "forcible compulsion" in section 565.061, RSMo, age of victim, relationship to defendant and testimony of victim that defendant guided her head and mouth, or that defendant threatened to ground victim, was not sufficient evidence to establish that victim was in reasonable fear of death, serious physical injury or kidnapping as required by conviction for forcible sodomy under this section. State v. Daleske, 866 S.W.2d 476 (Mo. App. W.D.).

Statutory sodomy, first degree, penalties.

566.062. 1. A person commits the crime of statutory sodomy in the first degree if he has deviate sexual intercourse with another person who is less than fourteen years old.

2. Statutory sodomy in the first degree is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless in the course thereof the actor inflicts serious physical injury on any person, displays a deadly weapon or dangerous instrument in a threatening manner, subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, or the victim is less than twelve years of age, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years.

(L. 1994 S.B. 693)

Effective 1-1-95

Statutory sodomy, second degree, penalty.

566.064. 1. A person commits the crime of statutory sodomy in the second degree if being twenty-one years of age or older, he has deviate sexual intercourse with another person who is less than seventeen years of age.

2. Statutory sodomy in the second degree is a class C felony.

(L. 1994 S.B. 693)

Effective 1-1-95

Child molestation, first degree, penalties.

566.067. 1. A person commits the crime of child molestation in the first degree if he or she subjects another person who is less than fourteen years of age to sexual contact.

2. Child molestation in the first degree is a class B felony unless the actor has previously been convicted of an offense under this chapter or in the course thereof the actor inflicts serious physical injury, displays a deadly weapon or deadly instrument in a threatening manner, or the offense is committed as part of a ritual or ceremony, in which case the crime is a class A felony.

(L. 1994 S.B. 693, A.L. 2000 S.B. 757 & 602)

CROSS REFERENCE: Child, genital mutilation of a female child, crime, penalty, defenses, RSMo 568.065

(2000) Suspended imposition of sentence is not a conviction and thus cannot be used to upgrade crime of child molestation in first degree. State v. Prell, 35 S.W.3d 447 (Mo.App.W.D.).

Child molestation, second degree, penalties.

566.068. 1. A person commits the crime of child molestation in the second degree if he or she subjects another person who is less than seventeen years of age to sexual contact.

2. Child molestation in the second degree is a class A misdemeanor unless the actor has previously been convicted of an offense under this chapter or in the course thereof the actor inflicts serious physical injury on any person, displays a deadly weapon or dangerous instrument in a threatening manner, or the offense is committed as part of a ritual or ceremony, in which case the crime is a class D felony.

(L. 1994 S.B. 693, A.L. 2000 S.B. 757 & 602)

CROSS REFERENCE: Child, genital mutilation of a female child, crime, penalty, defenses, RSMo 568.065

Deviate sexual assault, penalty.

566.070. 1. A person commits the crime of deviate sexual assault if he has deviate sexual intercourse with another person knowing that he does so without that person's consent.

2. Deviate sexual assault is a class C felony.

(L. 1977 S.B. 60, A.L. 1994 S.B. 693)

Effective 1-1-95

CROSS REFERENCE: Child abuse, definitions, actions for civil damages may be brought, when, RSMo 537.046

Sexual misconduct involving a child, penalty.

566.083. 1. A person commits the crime of sexual misconduct involving a child if the person:

(1) Knowingly exposes the person's genitals to a child less than fourteen years of age in a manner that would cause a reasonable adult to believe that the conduct is likely to cause affront or alarm to a child less than fourteen years of age;

(2) Knowingly exposes the person's genitals to a child less than fourteen years of age for the purpose of arousing or gratifying the sexual desire of any person, including the child; or

(3) Coerces a child less than fourteen years of age to expose the child's genitals for the purpose of arousing or gratifying the sexual desire of any person, including the child.

2. As used in this section, the term "sexual act" means any of the following, whether performed or engaged in either with any other person or alone: sexual or anal intercourse, masturbation, bestiality, sadism, masochism, fetishism, fellatio, cunnilingus, any other sexual activity or nudity, if such nudity is to be depicted for the purpose of sexual stimulation or gratification of any individual who may view such depiction.

3. Violation of this section is a class D felony; except that the second or any subsequent violation of this section is a class C felony.

(L. 1997 S.B. 56)

Sexual misconduct, first degree, penalties.

566.090. 1. A person commits the crime of sexual misconduct in the first degree if he has deviate sexual intercourse with another person of the same sex or he purposely subjects another person to sexual contact without that person's consent.

2. Sexual misconduct in the first degree is a class A misdemeanor unless the actor has previously been convicted of an offense under this chapter or unless in the course thereof the actor displays a deadly weapon in a threatening manner or the offense is committed as a part of a ritual or ceremony, in which case it is a class D felony.

(L. 1977 S.B. 60, A.L. 1994 S.B. 693, A.L. 2002 S.B. 969, et al.)

CROSS REFERENCE: Child abuse, definitions, actions for civil damages may be brought, when, RSMo 537.046

(1986) This section does not violate the Fourteenth Amendment to the U.S. Constitution despite the facts that identical conduct which is legal if done by a person of one sex is illegal if done by a person of the other sex, and that such prohibited conduct is a highly intimate activity of private life. State v. Walsh, 713 S.W.2d 508 (Mo. banc)

(2003) Texas statute making it a crime for same-sex persons to engage in certain intimate sexual conduct, as applied to adult males engaging in consensual act of sodomy in privacy of home, is unconstitutional under Due Process Clause of Fourteenth Amendment. Lawrence v. Texas, 123 S.Ct. 2472.

Sexual misconduct, second degree, penalties.

566.093. 1. A person commits the crime of sexual misconduct in the second degree if he:

(1) Exposes his genitals under circumstances in which he knows that his conduct is likely to cause affront or alarm; or

(2) Has sexual contact in the presence of a third person or persons under circumstances in which he knows that such conduct is likely to cause affront or alarm.

2. Sexual misconduct in the second degree is a class B misdemeanor unless the actor has previously been convicted of an offense under this chapter, in which case it is a class A misdemeanor.

(L. 1994 S.B. 693)

Effective 1-1-95

Sexual misconduct, third degree, penalty.

566.095. 1. A person commits the crime of sexual misconduct in the third degree if he solicits or requests another person to engage in sexual conduct under circumstances in which he knows that his requests or solicitation is likely to cause affront or alarm.

2. Sexual misconduct in the third degree is a class C misdemeanor.

(L. 1994 S.B. 693)

Effective 1-1-95

(2002) Section does not violate the constitutional guarantee of freedom of speech. State v. Moore, 90 S.W.3d 64 (Mo.banc).

Sexual abuse, penalties.

566.100. 1. A person commits the crime of sexual abuse if he subjects another person to sexual contact by the use of forcible compulsion.

2. Sexual abuse is a class C felony unless in the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual contact with more than one person or the victim is less than fourteen years of age, in which case the crime is a class B felony.

(L. 1977 S.B. 60, A.L. 1990 H.B. 1370, et al., A.L. 1991 H.B. 566, A.L. 1994 S.B. 693)

Effective 1-1-95

CROSS REFERENCE: Child abuse, definitions, actions for civil damages may be brought, when, RSMo 537.046

(1981) Offenses of sexual abuse in the first, second, and third degree may be, but are not necessarily, lesser included offenses under sodomy statute and deviate sexual assault statutes. State v. Gibson (Mo.App.), 623 S.W.2d 93.

Unlawful sex with an animal, penalties.

566.111. 1. A person commits the crime of unlawful sex with an animal if that person engages in sexual conduct with an animal or engages in sexual conduct with an animal for commercial or recreational purposes.

2. Unlawful sex with an animal is a class A misdemeanor unless the defendant has previously been convicted under this section, in which case the crime is a class D felony.

3. In addition to any penalty imposed or as a condition of probation the court may:

(1) Prohibit the defendant from harboring animals or residing in any household where animals are present during the period of probation or if probation is not granted for a period of time not to exceed two years after the defendant's sentence is completed;

(2) Order all animals in the defendant's possession subject to a civil forfeiture action under chapter 513, RSMo; or

(3) Order psychological evaluation and counseling of the defendant at the defendant's expense.

4. Nothing in this section shall be construed to prohibit generally accepted animal husbandry, farming and ranching practices or generally accepted veterinary medical practices.

5. For purposes of this section, the following terms mean:

(1) "Animal", every creature, either alive or dead, other than a human being;

(2) "Sexual conduct with an animal", any touching of an animal with the genitals or any touching of the genitals or anus of an animal for the purpose of arousing or gratifying the person's sexual desire.

(L. 2002 S.B. 969, et al.)

Defendant may be tested for various sexually transmitted diseases, when.

566.135. 1. Pursuant to a motion filed by the prosecuting attorney or circuit attorney with notice given to the defense attorney and for good cause shown, in any criminal case in which a defendant has been charged by the prosecuting attorney's office or circuit attorney's office with any offense under this chapter or pursuant to section 575.150, 567.020, 565.050, 565.060, 565.070, 565.072, 565.073, 565.074, 565.075, 565.081, 565.082, 565.083, 568.045, 568.050, or 568.060, RSMo, or paragraph (a), (b), or (c), of subdivision (2) of subsection 1 of section 191.677, RSMo, the court may order that the defendant be conveyed to a state-, city-, or county-operated HIV clinic for testing for HIV, hepatitis B, hepatitis C, syphilis, gonorrhea, and chlamydia. The results of the defendant's HIV, hepatitis B, hepatitis C, syphilis, gonorrhea, and chlamydia tests shall be released to the victim and his or her parent or legal guardian if the victim is a minor. The results of the defendant's HIV, hepatitis B, hepatitis C, syphilis, gonorrhea, and chlamydia tests shall also be released to the prosecuting attorney or circuit attorney and the defendant's attorney. The state's motion to obtain said testing, the court's order of the same, and the test results shall be sealed in the court file.

2. As used in this section, "HIV" means the human immunodeficiency virus that causes acquired immunodeficiency syndrome.

(L. 2002 H.B. 1756)

Treatment and rehabilitation program for perpetrators of sexual offenses, when.

566.140. Any person who has pleaded guilty to or been found guilty of violating the provisions of this chapter, and is granted a suspended imposition or execution of sentence or placed under the supervision of the board of probation and parole shall be required to participate in a program of treatment, education and rehabilitation designed

for perpetrators of sexual offenses. Persons required to attend a program pursuant to this section may be charged a reasonable fee to cover the costs of such program.

(L. 1984 H.B. 1255)

All probation or parole to be conditioned on receiving appropriate treatment.

566.141. Any person who is convicted of or pleads guilty or nolo contendere to any sexual offense involving a child shall be required as a condition of probation or parole to be involved in an appropriate treatment program.

(L. 1990 H.B. 1370, et al. § 5)

Sexual contact with an inmate, penalty--consent not a defense.

566.145. 1. A person commits the crime of sexual contact with an inmate if such person is an employee of, or assigned to work in, any jail, prison or correctional facility and such person has sexual intercourse or deviate sexual intercourse with an inmate or resident of the facility.

2. Sexual contact with an inmate is a class D felony.

3. The victim's consent is not an affirmative defense.

(L. 2002 S.B. 969, et al.)

Enticement of a child, penalties.

566.151. 1. A person at least twenty-one years of age or older commits the crime of enticement of a child if that person persuades, solicits, coaxes, entices, or lures whether by words, actions or through communication via the Internet or any electronic communication, any person who is less than fifteen years of age for the purpose of engaging in sexual conduct with a child.

2. It is not an affirmative defense to a prosecution for a violation of this section that the other person was a peace officer masquerading as a minor.

3. Attempting to entice a child is a class D felony.

4. Enticement of a child is a class C felony unless the person has previously pled guilty to or been found guilty of violating the provisions of this section, section 568.045, 568.050, or 568.060, RSMo, or this chapter, in which case it is a class B felony.

(L. 2002 S.B. 969, et al.)

NOTE: The following revised statutes can be founded at www.moga.state.mo.us/statutes.

A child under the jurisdiction of the Juvenile Court may **never** be reunited with a parent or placed in a home when the parent or any person residing in the home has been convicted of the **bolded** offenses, the others may be considered.

Chapter 566 Sexual Offenses

Sections

- 566.030 Forcible rape**
- 566.032 Statutory rape, first degree, penalties.
- 566.034 Statutory rape second degree**
- 566.040.1 Sexual assault, penalties.**
- 566.060.1 Forcible sodomy, penalties.**
- 566.062 Statutory sodomy, first degree, penalties.**
- 566.064.1 Statutory sodomy, second degree, penalty.**
- 566.067.1 Child molestation, first degree, penalties**
- 566.068.1 Child molestation, second degree, penalties.**
- 566.070.1 Deviate sexual assault, penalty.**
- 566.083.1 Sexual misconduct involving a child, penalty.**
- 566.090.1 Sexual misconduct, first degree, penalties.**
- 566.093.1 Sexual misconduct, second degree, penalties.**
- 566.095.1 Sexual misconduct, third degree, penalty.**
- 566.100.1 Sexual abuse, penalties.**
- 566.111.1 Unlawful sex with animal, penalties.**

Chapter 568 Offenses Against the Family

Sections:

- 568.010. Bigamy.
- 568.020. Incest.**
- 568.030. Abandonment of child in the first degree, penalty.
- 568.032. Abandonment of a child, second degree--penalty.

- 568.040. Criminal nonsupport, penalty, prosecuting attorneys to report cases to division of child support enforcement.
- 568.045. Endangering the welfare of a child in the first degree, penalties.**
- 568.050. Endangering the welfare of a child in the second degree.
- 568.052. Leaving a child unattended in a motor vehicle who causes an accident --first and second degree, penalties.
- 568.060. Abuse of a child, penalty.**
- 568.065. Genital mutilation of a female child, penalty--affirmative defenses**
- 568.070. Unlawful transactions with a child.**
- 568.080. Child used in sexual performance, penalties.**
- 568.090. Promoting sexual performance by a child, penalties.**
- 568.100. Factors to consider in establishing age of child participating in Sexual performances--testimony may be videotaped, when.
- 568.110. Professional's duty to report on film, photographs, videotapes, Failure to report, penalty--exceptions.
- 568.120. Treatment program for first offenders, cost--second offense, no Suspension of sentence or probation.
- 568.175. Trafficking in children--elements of crime--penalty.**

MEMORANDA HISTORY: CD04-79